UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE CEMENT LEAGUE[1]
Employer

and Case 02-RC-154016

NEW YORK AND VICINITY
DISTRICT COUNCIL OF CARPENTERS
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied, as it raises no substantial issues warranting review.

MARK GASTON PEARCE, CHAIRMAN

KENT Y. HIROZAWA, MEMBER

Dated, Washington, D.C., February 3, 2016.

Member Miscimarra, dissenting:

I would grant review of the Regional Director's decision to direct an election in the petitioned-for multiemployer unit for purposes of Section 9(a) representation. In my view, the Cement League (Employer), a multiemployer association, raises substantial issues warranting review regarding whether its members had the requisite intent to engage in multiemployer bargaining under Section 9(a) of the Act.

The Cement League and the Carpenters Union had a 28-year history of multiemployer bargaining for only Section 8(f) agreements. Upon expiration of the most recent 8(f) agreement, the Employer declined to extend multiemployer 9(a) recognition to the Union and commenced in renewed multiemployer bargaining before the Union filed its petition. Under these circumstances, the League, and its individual members, had every expectation that they were bargaining only for an 8(f) agreement—as they had for the past 28 years. Although it is well settled that any member-employer could have withdrawn from the League at the expiration of the existing 8(f) contract, none did so, presumably with the expectation that the League would negotiate another 8(f) agreement. There is no persuasive evidence that any of the League's members agreed to take part in multiemployer 9(a) bargaining.

In *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988), the Board explained the fundamental and significant distinctions between 8(f) and 9(a) relationships and agreements.

[1] The Employer's name appears as corrected.

Although the Board has established certain bargaining duties for a multiemployer association and union bargaining for a renewed 8(f) agreement, see, *James Luterbach Construction Co*., 315 NLRB 976 (1994), the Board has never addressed the circumstances presented here, where a multiemployer association with a long history of 8(f) agreements with the union is suddenly compelled to engage in bargaining, without its express consent, for a 9(a) agreement. In light of the significant differences between 8(f) and 9(a) agreements, I would grant review to consider whether the bargaining principles articulated in *Luterbach,* or some other principles, would best effectuate the purposes of the Act under these circumstances.

PHILIP A. MISCIMARRA, MEMBER

Dated, Washington, D.C., February 3, 2016